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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1941

## NO. 229

ELIZABETH WRIGHT and CHARLES C. WRIGHT,

*Petitioners,*

v.

GUSTA LOGAN, HARRIET LOGAN SAWYER and ESTA LOGAN REESE,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CERTIORARI GRANTED OCTOBER 15, 1941

## REPLY BRIEF OF THE PETITIONERS

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## REPLY BRIEF OF THE PETITIONERS

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### Preliminary Statement

All emphasis in this brief is supplied unless otherwise noted.

## The Order of This Reply Brief

This reply brief will reply to the respondents' brief in the same order of that brief, using the paging of the respondents' brief as headings in this brief.

As the respondents' brief in several instances treats a subject in different places, this brief will treat one subject at one place with proper cross references at the other headings of respondents' brief where the same subject was mentioned.

## Page 3 of Respondents' Brief (Under Heading "The Facts")

In the first full paragraph on page 3 the respondents' brief says:

> "Three months **after the expiration of their period of redemption,** on May 3, 1934, petitioners filed their petition. . . ."

This statement is repeated in one form or another 24 times in 28 pages of respondents' brief (from page 2 to page 30). The form of expression is varied but the argumentative suggestion that the petitioners had no right in their mortgaged farm is the same. For instance, on page 2, it is the **"equity of redemption"** and on page 11 it is the **"right of redemption."**

## Petitioners' Right of Redemption by Special Agreement

The "period of redemption" thus referred to by respondents is the Illinois statutory period of redemption following sale in foreclosure. It is twelve months for the mortgagor and three months additional for his creditors, or fifteen months in all. During this period the purchaser

holds a certificate of purchase which may be exchanged for a deed following expiration of the statutory period.

But these petitioners have a **right of redemption by special** agreement with the mortgagor, W. S. Logan, which was entered into after the foreclosure sale, while he held the certificate of purchase. This contractual right of redemption is independent of any statutory period of redemption. The existence of this **right of redemption by special agreement** was determined by the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. App. 481. From this determination of fact, no review was ever sought and it is the law of this case. It held that the petitioners' **right of redemption by special agreement** arose in 1933 before the twelve months statutory period expired and still existed at the date of the decision in 1937, nearly four years after the foreclosure and more than two years after the farmer debtor jurisdiction of the bankruptcy court was invoked in 1935 (R. 8, folio 6).

The determination by the Appellate Court of Illinois that the **right of redemption by special agreement** existed came about in this manner. The farmer debtors applied to the bankruptcy court on October 9, 1935 (R. 19, folio 18), for leave to continue their efforts to seek composition or extension with their creditors. In their application they set up their **right of redemption by special agreement** with the mortgagor. (They also averred that the mortgagor, as holder of the certificate of purchase had taken a void deed while proceedings under Section 75 (a) to (r) were pending). The bankruptcy court granted the petition and re-referred the case to the conciliation commissioner for further attempts at composition or extension (R. 22, folio 21; R. 22, folio 22; R. 23, folio 23; R. 24, folio 24; R. 25, folio 26).

Prior to this application to the bankruptcy court setting forth their **right of redemption by special agreement,** the petitioners had brought suit in the state court to have their right established as is shown by the report of the conciliation commissioner on September 28, 1935, at R. 18, folio 16, where he said, "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor." This "local court" case was the one, cited in the second paragraph, which by appeal in *Wright* v. *Logan*, 288 Ill. App. 481, found that the **right of redemption by special agreement** then existed and continued to exist at the date of the decision in 1937.

**This right of redemption by special agreement was consistently recognized by the bankruptcy court.** As late as March 11, 1939, which was **more than six years after the foreclosure sale, the bankruptcy court said,** at R. 39, top of page:

> "The deed held by the mortgagees has been retained in their possession under order of this court directing that **it shall not be recorded or given any effect** until and unless this court shall so direct." . . . "But in case this court found it necessary to order a sale, there would be a **period of redemption** of ninety days" . . . "**The jurisdiction of this court** over the deed held by petitioners [meaning the mortgage holders] and over petitioners be and the same **is hereby retained;** that **the debtors remain in possession and custody of the property,**" . . . "This matter will be continued for a period of 120 days from this date. During that time debtors shall have every **opportunity to redeem from the mortgage sale**" . . .

## Petitioners' Statutory Period of Redemption

Apart from the petitioners' **right of redemption by special agreement,** which was fully recognized by the bankruptcy court at all times, the state statutory redemption

provisions related to this case as follows: Before the mortgagee Logan who held the certificate of purchase in foreclosure became **entitled** to a deed, the petitioners, on May 3, 1934, filed their individual debtors' petition under Section 74 of the Bankruptcy Act. Thereupon the bankruptcy court issued a restraining order against all creditors (R. 7, folio 4). Later, on April 5, 1935, the bankruptcy court granted the petitioners leave to file as farmer debtors for agricultural composition or extension under Section 75 (a) to (r) (R. 7, folio 5). They accordingly filed their farmer debtor petition on the same date (R. 8, folio 6). By invoking Section 75 (a) to (r), subsections (n) and (o) thereof immediately became automatically operative to stay all proceedings in other courts. *Kalb* v. *Feuerstein*, 308 U. S. 433. Thereafter, the bankruptcy court dissolved the restraining order under **Section 74** (R. 7, folio 4). This did not nullify the effect of the provision of Section 75 (n) putting the farmer debtors and all their property under the exclusive jurisdiction of the bankruptcy court. Nor did it dispense with the specific provisions of Section 75 (o) which prescribe specifically how the prohibitions upon proceedings in a state court may be lifted. The order dissolving this section 74 restraining order is at R. 17, folio 14. No compliance with Section 75 (o) was ever sought or granted. Yet the foreclosure deed was delivered on July 27, 1935 (Respondents' brief, page 28, next to last paragraph.) This deed, delivered while Section 75 (n) and (o) was operative, was therefore wholly void. *Kalb* v. *Feuerstein*, 308 U. S. 433.

## The Illinois Law of Foreclosure

Lest it be suggested that some right was lost to the farmer debtors by the foreclosure sale it is here submitted that under Illinois law the purchaser at a foreclosure sale is

entitled to a certificate of purchase but **title remains in the mortgagor until the delivery of a deed to the holder of the certificate of purchase.** *Lightcap* v. *Bradley*, 186 Ill. 510, 532:

> "By the decree and by the statutes the title of the mortgagor and those claiming under him would be divested and the legal title vested in defendant [the mortgagee who held the certificate of purchase], upon the execution of a deed to her."

In this case of *Lightcap* v. *Bradley*, the mortgagee purchased the real estate at foreclosure sale and took a certificate of purchase. She then went into possession and paid the taxes for fifteen years but did not receive a deed. The mortgagor never redeemed. It was held that the mortgagee purchaser had no right whatever in the land.

It was this leading Illinois case of *Lightcap* v. *Bradley*, 186 Ill. 510, and subsequent cases, which were the basis of the decision of Judge Lindley in *In re Duffy and Raymond*, Eastern District of Illinois, 9 Fed. Supp. 166, which although overruled by the Circuit Court of Appeals for the Seventh Circuit, was ultimately sustained by this court in *Wright* v. *Vinton*, 300 U. S. 440, and in *Wright* v. *Union Central*, 304 U. S. 502. Thus Section 75 (n) was established as the supreme law of the land.

At page 15 of the brief of the respondents in answer to the Petition for Certiorari in this case, they argued that *Lightcap* v. *Bradley*, 186 Ill. 510, was reversed by this court in *Bradley* v. *Lightcap*, 195 U. S. 1, and *Bradley* v. *Lightcap*, 195 U. S. 24. It will be observed that in the present respondents' brief at page 17 this assertion is omitted.

As to these decisions, it need only be said that they did not reverse *Lightcap* v. *Bradley*, 186 Ill. 510, except in two

respects which do not affect its authority here. The then recently enacted Illinois statute as applied to the facts of that case then before this court in 1904 was held unconstitutional (1) because it was retroactive, having been **enacted after the execution of the mortgage** and (2) because the **mortgagee was in actual possession** before foreclosure and before the statute took effect. Thus it is seen that, where these two facts do not exist, *Lightcap* v. *Bradley*, 186 Ill. 510, is the law of Illinois exactly as Judge Lindley said it was in his *Duffy* and *Raymond* decision in 9 Fed. Supp. 166, and as sustained by this court.

Thus it is that there is no merit in the repeated statements in respondents' brief that the petitioners' right of redemption had expired.

**Page 3 of Respondents' Brief**
**(Under Heading "The Facts")**

In the same first full paragraph on page 3 of the respondents' brief says of the original petition under Section 74 that:

> "The cause was referred to the Referee in Bankruptcy who after a hearing entered an order denying the petition for the reason that the petitioners, having permitted the redemption period to expire, there was no contractual relation of petitioner and creditor between them and the former mortgagee, and because the petition was not filed within the time contemplated by the Statute (R. 27).
>
> On August 30, 134 the District Court entered an order approving and confirming the order of the Referee (R. 2; 28). Petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit and the judgment of the District Court was affirmed and rehearing denied. *Wright* v. *Logan*, 75 F. (2d) 687."

This statement is adopted from the opinion order of the bankruptcy court below (R. 36 to 40). It has been answered at pages 14 to 16 of the Petitioners' brief, to which reference is here made.

**Page 4 of Respondents' Brief**

At the top of page 4 of respondents' brief appears the following statement:

> "That Court [the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. App. 481] held a reasonable time should be given petitioners to redeem on the theory that mortgagee had made a verbal agreement to this effect. Under the Illinois Statutes, Chapter 110, Paragraph 212, it is provided no new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate is filed in the trial court within one year after final determination by the reviewing court. Petitioners did not comply with this statutory provision and have never filed the mandate of the Illinois Appellate Court. The right to obtain the extension to the period of redemption to be fixed by the trial court lapsed upon petitioners' failure to file such mandate (R. 29)."

In controversion of the foregoing statement, we submit the following:

1. The only fact determinative of the right of the petitioners to invoke the federal jurisdiction is **the existence of a property right** in the petitioners when they filed their debtor farmer petition under Section 75. If they then had this substantive right, Section 75 (n) makes them and their property subject to the exclusive federal jurisdiction. The procedural method of exercising that right of redemption is taken over from state procedure into federal procedure by Section 75.

2. The court of last resort of the State of Illinois, where the petitioners reside and where their property is located, unequivocally determined that the petitioners had that substantive right of redemption every moment from the foreclosure sale to the date of its decision in 1937. This was nearly two years after the federal jurisdiction was invoked. On this subject of whether the petitioners' right of redemption existed that court said, at the end of its opinion:

> "The evidence clearly shows that the plaintiffs remained in possession of their farm after the foreclosure and made improvements during the period of redemption with the knowledge and consent of the defendant, relying on their arrangements with the defendant for the extension of the time of redemption.
>
> A doctrine of *res adjudicata* did not preclude them from maintaining their action. The decision is therefore reversed and the cause remanded, with directions that the court ascertain the amount due from the plaintiffs to the defendant; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the court and that upon payment thereof, the deed from the master in chancery conveying the premises described in the decree of foreclosure to the defendant be cancelled, and that the defendant, Logan, be required upon such redemption, to reconvey by a proper deed to Elizabeth Wright the title acquired by him to the property through said master's deed and certificate."

3. Obviously the petitioners sought the decision of the Illinois court to establish their substantive right of redemption. The conciliation commissioner, on May 16, 1935, in his report to the bankruptcy court, reported a "case pending here in our local court to determine the rights of debtors to redeem from W. S. Logan, creditor." (R. 18, f. 16.)

4. In their petition to the bankruptcy court for permission to continue under Section 75 (a) to (r), instead of filing an amended petition under Section 75 (s), the farmer debtors informed the court, among other things:

> "That before and after the twelve months period of redemption provided by Illinois Statute to debtors from foreclosure, mortgage sales expired, said creditor at different times and places, at his office in Paris, Illinois, and elsewhere, verbally agreed with your petitioners that they could redeem said farm any time they could get the money to pay him what they owed him; that they could redeem the property from him either before or after the twelve months period of redemption expired after said sale and even after that time he would deed said property to their daughter or any one else they suggested; . . ." (R. 20, bottom of page f. 19.)

5. In its jurisdictional decision in the same case in *Wright* v. *Logan*, 364 Ill. 33, the Supreme Court of Illinois said:

> **"The only controversy between the parties was as to the right of redemption."**

and directed that the appeal be presented to the Appellate Court.

6. In addition to all of the foregoing the bankruptcy court itself, during all of the time the farmer debtor proceedings was pending, held that the right of redemption existed. It was not questioned.

On March 9, 1939, this entry appears:

> "Court directs counsel to submit to the court any agreed statement as to amount due at this time including deficiency judgment." (R. 4, entry of March 9, 1939.)

On March 11, 1939, the district judge said:

"The deed held by the mortgagees has been retained in their possession under order of this court directing that it **shall not be recorded or given any effect** until and unless this court shall so direct" (R. 39, top of page).

"Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possibly work out a satisfaction not only of the mortgage but of their other debts so that, there then being no liens against the life estate, they would have a means of livelihood" (R. 39, last sentence of paragraph which continues over from page 38).

"The petitioners have a deed to which the court may at any time give full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, **there would be a period of redemption** of 90 days" (R. 39, the beginning of the first whole paragraph on the page).

"Accordingly it is the order of the court that **the jurisdiction of this court over the deed** held by the petitioners **and over the petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property.** . . ." (R. 39, beginning at f. 64).

"This matter will be continued for a period of 120 days from this date. During that time **debtors shall have every opportunity to redeem from the mortgage sale** and to make any and all possible adjustments and composition with their creditors" (R. 39, bottom of page).

7. The respondents themselves fully recognized the existence of the right of redemption. Their petition to the bankruptcy court, from which this case arises appears

at R. 26 to 30. The prayer which begins at the bottom of R. 29, seeks (1) a report from the conciliation commissioner, (2) for authority to take possession, (3) that the bankruptcy court find the amount due and fix "a reasonable time . . . to pay" and (4) fix a time for hearing.

8. The Circuit Court of Appeals likewise agreed that the bankruptcy court held jurisdiction over the right of redemption. See the opinion at R. 70 and 71. That court based its decision on factors inherent in Section 75. It did not base its decision upon the theory that the bankruptcy court had no jurisdiction over the right of redemption.

Therefore it appears clear that the right of redemption has always existed since foreclosure. First, by the statutory provision. Second, by the special agreement for the right of redemption. Third, the bankruptcy court has always held that it had complete jurisdiction of that right of redemption, and its jurisdiction was conceded by the respondents whose objections were based upon the procedural provisions of Section 75.

**Page 6 of Respondents' Brief**

Under the heading "Comments on Certain Statements in Petitioners' Statement of the Case," the respondents' brief says, at the bottom of page 6:

> "In petitioners' statement of the case on page 3, paragraph 6, the implication is apparent that petitioners filed their petition under Sub-Section 75 in a proper and lawful manner. When the facts are fully considered we discover that on September 30, 1935, the District Court entered an order granting leave to petitioners to amend their petition to include a prayer

for adjudication under Sub-Section (S) of 75 of the Bankruptcy Act as amended within ten days of the date of said order and that the petition mentioned in said paragraph was filed with an entire disregard of the Court's order."

The record itself is a sufficient answer to the foregoing quotation. The petitioners sought and obtained permission from the bankruptcy court to continue under Section 75 (a) to (r) for composition or extension instead of going under Section 75 (s) by an amended petition.

R. 19, f. 17. September 30, 1935. The court ordered the petitioners to file their amended petition under Section 75 (s) or within ten days show cause why their petition should not be dismissed.

R. 19, f. 18. October 9, 1935. The petitioners stated to the court their right of redemption by special agreement with the mortgagee and his refusal to comply therewith. They prayed that their proceeding continue under the provisions for composition or extension.

R. 22, f. 22. October 14, 1935. The bankruptcy court granted the prayer of the petitioners and reinstated the case under Section 75 (a) to (r) and ordered that it "be referred to the duly qualified conciliation commissioner of Edgar County for such proceedings as provided under subsection (g) of Section 75 as amended."

R. 23, f. 23. October 14, 1935. The court re-referred the case to the conciliation commissioner for administration for composition or extension "and if application for confirmation of proposal for composition or extension under said Section 75 be duly filed with the conciliation commissioner, to hold, after due notice to creditors, a final creditors' meeting . . ."

R. 24, f. 24. November 9, 1935. The petitioners apprised the bankruptcy court that the conciliation commissioner was disqualified because as an attorney he represented a creditor.

R. 25, f. 26. November 12, 1935. The court re-referred the case to a different conciliation commissioner with like instructions to proceed under Section 75 (a) to (r) for composition or extension.

**Page 8 of Respondents' Brief**

At the end of the first paragraph of page 8 of the respondents' brief, it is said:

> "It is stated in paragraph 10 of the statement of the petitioners on page 4 that the farmer-debtors paid rent. The Court found to the contrary."

We merely quote from the report, dated January 11, 1940, of the conciliation commissioner before whom the case pended. R. 42, f. 29:

> "March 21, 1939—Received from Elizabeth Wright $300.00 in payment of 1938 rental of the East Half SE SE Sec. 20 and North Half SW of the NW of Sec. 21, all in Twp. 14 North, Range 12, West of the 2nd P. M.
>
> March 28, 1939—Entered into a lease of 40 acres, a part of the bankrupt estate, with Elizabeth Wright and Charles C. Wright for the crop year from the 1st of March, 1939 to the 1st of March, 1940, at an annual rental of $300.00, payable $150.00 September 1, 1939 and $150.00 on January 1, 1940. This lease was made pursuant to an order of the United States District Court for the Eastern District of Illinois entered in Bankruptcy No. 2414-D on March 11, 1939.
>
> July 19, 1939—Received from Elizabeth Wright $150.00 in payment of the first instalment of rent for the crop year 1939 due upon her lease."

R. 43, f. 30:

> "Mrs. Wright has informed me that she has paid the 1938 taxes on the 40 acre and 70 acre tracts.
>
> Your commissioner further respectfully reports that he now has on hand the sum of $450.00 which are rental receipts from Elizabeth Wright."

There is no power in a bankruptcy court to require rent to be paid under Section 75 (a) to (r). Rent may be ordered only under Section 75 (s).

**Pages 12 to 18 of Respondents' Brief**

We believe that the reliance placed upon the cases cited by the respondents is unwarranted and we discuss them here.

*Buttars* v. *Utah*, 116 F. 2d 622 (C. C. A. 10) cited at page 12 of respondents' brief).

(1) The opinion recognized that a former order of October 9, was invalid in fixing an arbitrary sixty day redemption period but held that since there was no appeal it became the "law of the case." (2) The holding that the force of Section 75 (n) and (o) is spent in the interim between Section 75 (a) to (r) and Section 75 (s) and therefore foreclosure may then be accomplished is in conflict with the decisions of other jurisdictions. For example *Schriever* v. *Oxford*, 116 F. 2d 684 (C. C. A. 6), decided six months later, held that by authority of *John Hancock* v. *Bartels*, 308 U. S. 180, Section 75 (n) and (o) must be interpreted so to preserve the opportunity to administer the procedure under Section 75 (s).

It should also be especially noted that *Buttars* v. *Utah* misquotes Section 75 (n). **According to that opinion (in the second from the last paragraph) Section 75 (n) extends the right of redemption necessary only "for the purposes of carrying out the provisions of the act that is to afford the debtor an opportunity to work out a composition or extension of his debts" under Section 75 (a) to (r). The statute does not confine Section 75 (n) to the Act but to the entire Section 75.** It says that Section 75 (n) shall be extended "for the period necessary for the purpose of carrying out the provisions of this **Section**" which includes Section 75 (s). **The exclusive jurisdiction of the bankruptcy court under Section 75 (n) is unlimited for all the purposes of Section 75** (that is Section 75 (a) to (r) and Section 75 (s)—not merely for a part of it.

*In re Cresap*, 99 F. 2d 772 (C. C. A. 7) (pages 12 to 14 of respondents' brief).

The Seventh Circuit held (1) that **the petitioner had never been a farmer but was a railroad man and never lived on a farm.** This settled the matter. But the decision went further and held (2) that he had "**no hope of rehabilitation.**" The District Court had dismissed the case under authority of the Seventh Circuits *Lowmon* and *Wright* v. *Union Central* decisions which held that the statutory right of redemption was not affected by Section 75. When these decisions were overruled by this court in *Wright* v. *Union Central*, 304 U. S. 502, the Circuit Court reverted to the "farmer" and "rehabilitation" subjects which had not theretofore entered the case. Later this court overruled the "rehabilitation" theory in *John Han-*

*cock* v. *Bartels*, 308 U. S. 180. The *Cresap* decision is now repudiated except for the holding that the petitioner was not and never was a "farmer."

In their original reply brief, filed by these respondents in this case on the petition for certiorari, they there said of this *Cresap* decision at page 12:

> "The court held that the debtor had nothing more than a bare legal title which was valueless so far as rehabilitation was concerned and the order striking the real estate from the debtor's schedule was affirmed."

This we think correctly shows the gist of that decision and it was overruled by this court in *John Hancock* v. *Bartels*, 308 U. S. 180.

Apropos of the respondents observations at the foot of page 14 of their brief that the petitioners violated the order of September 30, 1935, we suggest that the order of the bankruptcy court of September 30, 1935 (R. 19, f. 17) was rescinded by that court in its orders of October 14, 1935, November 9, 1935, and November 12, 1935, at R. 22, R. 23, R. 24, and R. 25, as shown at pages 13 and 14 of this reply brief.

*Bernards* v. *Johnson*, 103 F. 2d 567 (C. C. A. 9) (page 15 of respondents' brief).

**All proceedings in controversy occurred under the original or under the present Section 75 (s) (the Act of June 28, 1934, or the Act of August 28, 1935).** All proceedings in this *Wright* case have occurred under Section 75 (a) to (r). There was no **right of redemption by special agreement** in the *Bernards* case as in this case but the statutory right of redemption expired normally.

While the farmer debtor proceeding was being conducted under the first Section 75 (s) by the bankruptcy court and four days after appraisers were appointed, this court held the law to be unconstitutional. **The case had passed through and out of Section 75 (a) to (r) for composition or extension and into the invalid Section 75 (s)** under which the referee in bankruptcy (then by the law designated to conduct the proceeding) had adjudicated them bankrupts. **DURING THE PERIOD AFTER THE SUPREME COURT DECISION AND BEFORE THE PRESENT SECTION 75 (s) WAS ENACTED THE REAL ESTATE WAS SOLD IN FORECLOSURE.**

Section 75 (a) to (r) having been exhausted and there being no Section 75 (s), **there was no applicable law retaining the exclusive jurisdiction of the bankruptcy court as to mortgaged real estate, except the general bankruptcy law which permitted disclaimer, abandonment and foreclosure of mortgaged real estate. The state court had POWER when it acted.**

All subsequent litigation in the bankruptcy court under the present Section 75 (s) was bottomed upon two foreclosure sales in the state court conducted when there was no farmer debtor law operative. Under such circumstances, it necessarily followed that the litigation concerning the validity of the foreclosures sales should be conducted according to the rules and laws governing reviews and appeals. The doctrine of the "law of the case" was applicable.

*In re Davis*, 22 Fed. Supp. 12, pages 15 and 16 of respondents' brief.

This case is most ineptly quoted and cited by the respondents. As we were compelled to say in our reply

brief on the application for certiorari, the quotation at page 16 of respondents' present brief is neither correct nor complete. It omits the following sentence:

> **"This court's original thought, as expressed in In re Duffy and In re Raymond, 9 Fed. Supp. 166, can not prevail in view of the later decisions of the Circuit Court of Appeals [Seventh Circuit] in the two cases mentioned."**

The "original thought" of the district judge (in the *Duffy and Raymond* opinion) was exactly contrary to the opinion he was announcing in the *Davis* case. The "two cases mentioned" were (1) the *Lowman* case, (C. C. A. 7) 79 F. 2d 887, and (2) *Wright* v. *Union Central*, (C. C. A. 7) 91 F. 2d 894, both of which were later overruled by this court, the first in *Wright* v. *Vinton*, 300 U. S. 440 (where it was specifically mentioned in the first paragraph), and the second in *Wright* v. *Union Central*, 304 U. S. 502, which reversed it.

The district judge originally held that before delivery of a deed to the holder of the certificate of purchase the mortgagor still had his right of redemption under Illinois law. He, however, felt bound by the *Lowmon* and *Wright* v. *Union Central* decisions of the Seventh Circuit. This court later held with the district judge and against the Seventh Circuit, and so destroyed the district judge's decision in the *Davis* case and upheld his "original thought" in his *Duffy and Raymond* decision.

In passing we refer to respondents' recurrence to *Wright* v. *Logan*, 75 F. 2d 687 (C. C. A. 7). We must repeat (from pages 14 and 15 of the petitioners' brief herein) that *Wright* v. *Logan*, 75 F. 2d 687, did not decide anything con-

cerning an oral agreement for redemption. It held only that under Section 75 creditors must consent in writing to the debtors' proposal. This argument was also presented by the respondents (appellees there) in the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. 481, and utterly rejected. The court found that the petitioners had a right of redemption by special agreement which continued to exist long after the farmer debtor jurisdiction of the federal court was invoked. This has been discussed at pages 14 and 15 of the petititoners' brief and at pages 2 to 4 of this brief.

**Bottom of Page 18 and Top of Page 19 of Respondents' Brief**

We must observe, anent the paragraph at the bottom of page 18 and the top of page 19 of respondents' brief that there is no evidence whatever of any "voluntary offer to surrender title" except at R. 48, folio 73. Such an offer, even if in the form of a solemn contract embodied in a court order approved by the parties not to invoke the judicial process is void as against public policy. No one may contract away his access to the courts. In a farmer debtor case where there was such a formal court order so approved by the parties, it was held to be void. *Trego* v. *Wright*, 111 F. 2d 990 (C. C. A. 6), relying upon *Guaranty* v. *Green*, 139 U. S. 137, and *Mutual* v. *Cleveland*, 82 Fed. 508.

**Bottom of Page 20 and Top of Page 21 of Respondents' Brief**

*Bernards* v. *Johnson.*

We have discussed the decisions of *Bernards* v. *Johnson*, 103 F. 2d 567 (C. C. A. 9) at pages 17 and 18 of this

brief and the discussion there applies equally to *Bernards* v. *Johnson*, 86 L. Ed. 14, 21, decided by this court November 10, 1941.

**Pages 21 to 25 of Respondents' Brief**

The argument that no equity of redemption existed when the original petition was filed (pages 21 to 24 of respondents' brief) has been answered at pages 2 to 12 of this brief.

The argument that failure to file the mandate of the state appellate court wiped out the right of redemption by agreement (page 24) has been answered at pages 8 to 12 of this brief. An examination of the Illinois decisions relied upon to sustain this argument follows.

**Pages 25 to 27 of the Respondents' Brief**

We here discuss the four Illinois cases cited by the respondents in their brief at pages 25 to 27.

According to the reasoning of the respondents, the finding by the Appellate Court of Illinois that as a matter of fact the petitioners had a right of redemption by agreement with the mortgage holder, establishes that no such right of redemption existed because a transcript or mandate of that finding was not filed in the lower court.

The respondents say that, applying these decisions, the Circuit Court decision stands and ergo, the petitioners have no right of redemption despite the finding of the Appellate Court that they have that right. We do not believe that the cited Illinois decisions support such a conclusion.

1. *Town of Anchor* v. *Stewart*, 270 Ill. 57;
2. *Public Utilities Commission* v. *Smith*, 298 Ill. 151.

These two decisions must be discussed together.

In January 1914, the town applied for an injunction restraining an individual, Stewart, from putting a tract across East Street. The injunction was granted and on appeal was sustained. This was the case of *Town of Anchor* v. *Stewart*.

In a different proceeding before the Utilities Commission, also filed in January 1914, a railroad sought and obtained the right to lay a track across East Street. On appeal this right was sustained. It was argued that the granting by the Utilities Commission to the railroad of the right to lay a track conflicted with the injunction the town had obtained against Stewart. In considering this objection, the Supreme Court of Illinois held: (1) the issues were not the same; (2) the parties were different and (3) the subject matter was not common to the two cases. It inevitably followed that an injunction against an individual in a state court could not deprive the Public Utilities Commission of its power to grant a right of way to a railroad.

The decisoin did not hold, as contended by the respondents, that the decision of the Appellate Court in the town case was "wiped out", thus leaving the injunction of the state Circuit Court still effective. To the contrary the injunction of the state Circuit Court was disregarded.

As quoted by the respondents the Illinois Supreme Court said that the record in the town case against Stewart was an estoppel against the parties. So here the respondents

are estopped to deny the right of redemption by agreement between the mortgagors and mortgagees. If the petitioners should again sue in the state courts to establish their right of redemption by agreement with the mortgagor, the respondents would be estopped to deny the original finding in *Wright* v. *Logan*, 288 Ill. App. 481, that the right of redemption existed. In the very case cited by the respondents (*Public Utilities* v. *Smith*, 298 Ill. 151), the Supreme Court of Illinois cited *Koon* v. *Nichols*, 85 Ill. 155, which establishes this principle.

It is also readily discernible that in addition to all that has been suggested by respondents and by the petitioners here, there is a fundamental difference between an injunction issued by a court and a right of redemption created by the acts of individuals and found long afterwards by a court to have existed. An injunction is **created by the court**. A contractual right of redemption is **created by the individuals** and exists prior to the finding of a court which recognizes its existence. One is the **creation** of the court, the other is **recognized** by the court and exists apart from the recognition.

3. *Austin* v. *Dufour*, 110 Ill. 85.

It will be agreed that "if either party **desires to prosecute a case further**, . . . he must file a transcript." Having invoked the exclusive jurisdiction of the federal court under Section 75, the petitioners did not desire to prosecute their case further in the state courts. The only thing such a further prosecution could have accomplished would have been to consummate the existing right of redemption under state law. Such right of redemption was already taken over by the federal court under Section 75 and governed by the methods there prescribed.

4. *Heath* v. *Jones*, 12 Ill. App. 493.

The plaintiff sued at law and obtained a money judgment. The defendant appealed and the judgment was reversed. The time expired for filing the transcript or mandate of the appellate court. Later the plaintiff filed a bill in equity seeking a right to establish his claim. The equity court held there had been no fraud, mistake, accident or surprise, warranting relief in equity. That was the point of the equity case. Contrary to the argument of the respondents here, there was no holding that the original judgment in the lower law court was revived despite the reversal by the superior court.

**Pages 28 to 30 of Respondents' Brief**

The respondents assert that "The master's deed is valid". Their argument is based upon a false premise—that is upon the assertion that because an injunction issued under Section 74 was dissolved, therefore Section 75 (n) and (o) no longer applied.

The record tells a clear story.

R. 2, three entries of May 3, 1934. The petitioners filed their petition under **Section 74** and the bankruptcy court issued a restraining order shown at R. 7. This was necessary because **Section 74, for individual debtors, did not automatically stay proceedings in foreclosure.**

R. 2, entries of April 5, 1935. The petitioners applied for and were granted leave to invoke Section 75 for farmer debtors, they filed their farmer debtor petition, and it was referred to a conciliation commissioner. R. 7, f. 5. R. 8, f. 6. Section 75 automatically stays all foreclosure proceedings. Section 75 (n) and (o).

R. 17, f. 14. June 11, 1935. This order "orders that said injunction heretofore entered herein be and the same is hereby dissolved." No other injunction except that issued under Section 74 on May 3, 1934, at R. 2 was ever issued. Its dissolution in no way interfered with the automatic stay of Section 75 (n) and (o) and it did not purport to do so. As shown elsewhere at pages 10 to 11 of this brief, the bankruptcy court at all times recognized that the master's deed was ineffective.

Section 75 having been invoked on April 5, 1935 (R. 5, R. 7, f. 6), the master's deed (delivered on July 27, 1935, before the first report of the conciliation commissioner had been made on September 28, 1935, R.18, f. 16) was necessarily void because no application was ever made pursuant to Section 75 (o) to permit it. *Kalb* v. *Feuerstein*, 308 U. S. 433.

Although, as said by the respondents at page 30, "at the time the master's deed was issued there was no injunction" there was Section 75 (o) which was an automatic deprivation of power. *Kalb* v. *Feuerstein*, 308 U. S. 433.

*Bernards* v. *Johnson*, 86 L. Ed. 14, 21, we have discussed at pages 17 and 18 of this brief. There was no law, state or federal, to prohibit the foreclosure sale in the *Bernards* case. All proceedings under Section 75 (a) to (r) had ended and there was no proceedings pending at all under Section 75 because the new Section 75 (s) was not then enacted. The state court had full power when it held the sale in foreclosure.

**Pages 31 to 32 of Respondents' Brief**

We merely suggest that pages 18 and 19 of the petitioners' brief herein show from the record that the reten-

tion of the case under Section 75 (a) to (r) was pursuant to the orders of the court. At no time did the petitioners disobey any order of the court.

**Pages 32 and 33 of Respondents' Brief**

The petitioners have not asserted that the *Borchard* and *Wright* cases are identical as asserted at the bottom of page 32 of the respondents' brief. We say they are strikingly similar and we suppose that the erroneous decision in the district court in this *Wright* case followed the decisions of the district court and of the Circuit Court of Appeals in the *Borchard* case because they were not reversed by this court until two months later. We refer to pages 21 to 23 of petitioners' brief under the heading "The Borchard and Wright Dismissals Compared."

**Pages 35 to 39 of Respondents' Brief**

From the statement at page 39 of the respondents' brief that in "not a single case cited by petitioners" had the farmer debtor's period of redemption expired, we merely appeal to the decisions in those cited cases.

**Pages 39 to 40 of Respondents' Brief**

The statement in the middle of page 40 of the respondents' brief that "In this case before the court there is no extensive legal staff of large corporate mortgage holders. The respondents are ordinary citizens who have found themselves thus far unable to collect debt fully due them."

We would not disparage counsel. We do suggest that in this conflict between farm mortgagors and the holders of farm mortgages, the farmer, as this Court said in *Wright* v. *Union Central*, 311 U. S. 273, 279, finds himself engaged

in a race "for which customarily he would be poorly equipped". As stated by Chief Justice Hughes in *Home* v. *Blaisdell*, 290 U. S. 398, 445:

> "Also important is the fact that mortgages, as shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. **These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming.**"

It is a matter of historical record that in one case in which neither it nor any of its corporate constituent members was a party, the Association of Life Insurance Presidents contributed $60,000.00 for attorney fees and $3790.63 for expenses in contesting one suit in one federal court against an individual farmer debtor. Temporary National Economic Committee, Hearing, June 13, 1939, pages 4352 to 4353 and 4750.

The scores of erroneous adverse decisions throughout the nation are available to all mortgage holders in contesting farmer debtor proceedings.

Petitioners join respondents in asking that "the law found in the statute and the decisions be applied to the facts in this case". In this respect we note:

(1) Section 75 (q) provides that "a conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section".

(2) Section 75 (s) "Any farmer failing to obtain the acceptance" to a composition or extension proposal "or if

he feels himself aggrieved by the composition and/or extension, may amend his petition . . ."

(3) Contrary to all other debtor provisions under Chapter VIII of the Bankruptcy Act there is no authority in Section 75 for dismissing a farmer debtor case.

(4) Contrary to all other such statutes there is no provision for finding that a farmer debtor petition is filed in good faith before filing.

(5) The right of the farmer debtor to redeem may not be cut off by a request for a public sale. *Wright* v. *Union Central*, 311 U. S. 273.

(6) **The statute quite clearly was enacted to accomplish a purpose.** The ultimate goal is the opportunity of the farmer debtor to redeem after a three year stay under Section 75 (s). That purpose can not be thwarted upon the theory that the court, having retained jurisdiction for a period of time under Section 75 (a) to (r), may hold that the farmer debtor has had a "reasonable time" and has enjoyed the "equivalent" of Section 75 (s) and therefore the proceeding should then be terminated before Section 75 (s) has been invoked.

Respectfully submitted,

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December 29, 1941.